

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 09-20225

SCOTT SAMONEK,

Defendant.

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**OPINION AND ORDER DENYING MOTION TO VACATE SENTENCE  
AND DENYING A CERTIFICATE OF APPEALABILITY**

The Sixth Circuit authorized Scott Samonek to bring a second motion to vacate his sentence under 28 U.S.C. § 2255, which is now before the court. (ECF Nos. 63, 68.) This motion, filed in 2016, argues that Defendant should be resentenced based upon *Johnson v. United States*, 135 S. Ct. 2551 (2015). Specifically, it contends that Defendant's felonious assault conviction no longer qualifies as a predicate offense for a career offender enhancement under the U.S. Sentencing Guidelines because § 4B1.2(a) is unconstitutionally vague.

The government filed a response explaining that two subsequent decisions have foreclosed this argument. (ECF No. 70.) In *Beckles v. United States*, 137 S. Ct. 886 (2017), the Supreme Court held that the Sentencing Guidelines are not subject to vagueness challenges and thus § 4B1.2(a) is not void for vagueness. *Id.* at 892. Moreover, in *United States v. Harris*, 853 F.3d 318 (6th Cir. 2017), the Sixth Circuit held that a Michigan conviction for felonious assault is a crime of violence under § 4B1.2(a) and thus qualifies as a predicate offense for a career offender enhancement. *Id.* at 322.

Defendant filed a reply in which counsel acknowledged his agreement with the government that the merits of the § 2255 motion have been undermined by these decisions. (ECF No. 71.)

Because Defendant's argument based upon *Johnson* no longer has merit, the court will deny his § 2255 motion. The court will also deny a certificate of appealability because jurists of reason would not debate the court's analysis with respect to Defendant's claim. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). Accordingly,

IT IS ORDERED that Defendant's § 2255 Motion to Vacate Sentence (ECF No. 68) is DENIED.

IT IS FURTHER ORDERED that a Certificate of Appealability is DENIED.

s/Robert H. Cleland /  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: March 27, 2019

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 27, 2019, by electronic and/or ordinary mail.

s/Lisa Wagner /  
Case Manager and Deputy Clerk  
(810) 292-6522

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